IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A. No. 30 of 2006

DATE OF DECISION: 30.10.2007

Commissioner of Central Excise, Ludhiana

…Appellant

Versus

M/s Omkar Steel Tubes (P) Ltd. and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr.Gurpreet Singh, Central Govt. Standing Counsel, for the appellant-revenue.

JUDGMENT

M.M. KUMAR, J.

This appeal filed by the appellant-revenue under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), challenges order dated 1.6.2006, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal). It has been claimed that the following questions of law would arise for determination of this Court:-

i) Whether equal penalty under Section 11AC is liable to be imposed on the assessee in those cases which fall under the purview of Explanation (1) to Sub-Section 2(B) of Section 11A of the Central Excise Act, 1944, where duty has been deposited before issue of show cause notice?

ii) Whether the CESTAT is justified in waiving the penalty imposed on the Director of the party under

Rule 26 of the Central Excise Rules particularly when he had admitted the shortage of the goods detected by the Central Excise Staff and the clandestine removal of the goods could not be carried out without his knowledge and connivance?

After hearing learned counsel for the appellant and perusing the record we find that the matter is not *res integra*, inasmuch as, we have already decided similar appeals against the revenue and in favour of the assessee in the cases of **Commissioner of Central Excise, Ludhiana v. M/s Omkar Steel Tubes (P) Ltd. (C.E.A. No. 5 of 2007, decided on 28.8.2007); Commissioner of Central Excise, Ludhiana v. M/s Crop Chemical India Ltd. and another (C.E.A. No. 6 of 2007, decided on 31.8.2007); Commissioner of Central Excise, Delhi-III v. M/s Sun Vacuum Former Pvt. Ltd. (C.E.A. No. 56 of 2007, decided on 7.9.2007);** and **Commissioner of Central Excise, Chandigarh v. M/s Diamond Steel Rolling Mills and another (C.E.A. No. 25 of 2007, decided on 7.9.2007).**

In view of the above, instant appeal fails and the same is dismissed in terms of the aforementioned judgments.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 30, 2007
Pkapoor